Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Calling Party Pays Service Offering	)	WT Docket No. 97-207
in the Commercial Mobile Radio Services	)	
	)	
	)	

COMMENTS OF PILGRIM TELEPHONE, INC.

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Executive Summary

Calling Party Pays (CPP) holds considerable potential to benefit consumers by promoting local exchange competition, fostering competition in the wireless marketplace, and enhancing the efficient use of valuable spectrum resources. These potential benefits to consumers all serve important statutory objectives codified in the Communications Act. Although CPP may ultimately fall short of this potential, it deserves a fair test in the marketplace. In fact, the Commission has initiated this rulemaking for purposes of determining how that fair test can be provided.

The Commission must conclude that the likelihood of realizing these potential benefits of CPP depends directly upon actions by the Commission to ensure that commercial mobile radio service (CMRS) providers have the means to bill and collect for the CPP service option. If carriers cannot bill and collect for CPP, then there is no business basis for offering the service option — and the chance to reap the consumer benefits of CPP will be lost.

If CPP providers are left to try to do billing and collection on their own, then CPP will not work. There is no practical way for CPP providers to solve the problems associated with their attempting to render and collect bills from calling parties who only occasionally place calls to CPP subscribers. Although there are general advantages to be gained by requiring local exchange carriers (LECs) to furnish billing-related information to other service providers as unbundled network elements under the Communications Act, such a requirement would not solve the collection problems faced by CPP providers.

In order to give CPP a chance to work, the Commission must require LECs to furnish billing and collection services to CPP providers. Unless CPP can be attached to the powerful

engine of LEC billing and collection, CPP will not be able to pull out of the station. On the other hand, requiring the LECs to provide billing and collection does not amount to giving CPP a free ride — LECs would be fairly compensated for providing the service, and there is no persuasive evidence that they would incur prohibitive costs or burdens, or that they would be competitively disadvantaged. It may even be the case, as some parties have suggested, that there are anti-competitive motives behind LEC refusals to provide billing and collection for CPP.

The Commission has sufficient statutory authority to require LECs to provide billing and collection to CPP providers. The Commission, in its decision thirteen years ago to remove the obligation of LECs to provide billing and collection to interexchange carriers (IXCs) on a tariffed basis, set the framework for analyzing whether it should exercise its ancillary jurisdiction. The CPP case is different from the IXC case under each of the criteria the Commission applied in its 1986 decision. The Commission should conclude in this proceeding that it must exercise its ancillary jurisdiction in order to protect and promote statutory purposes — CPP will enhance competition and spectrum efficiency, but it will not have an opportunity to do so in the marketplace unless the Commission requires LEC billing and collection.

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Pilgrim Telephone, Inc. (Pilgrim), by counsel, and pursuant to the Notice of Proposed Rulemaking released by the Federal Communications Commission (Commission) on July 7, 1999, in the above-captioned proceeding,[1] hereby submits its comments regarding the proposals made by the Commission.

I. INTRODUCTION

Pilgrim is an interstate, interexchange carrier in the business of providing casual access, common carrier services.[2] The services provided most extensively by Pilgrim are collect and calling card casual access common carrier services, and various information and enhanced

[1] Calling Party Pays Service Offering in the Commercial Mobile Radio Services, WT Docket No. 97-207, Declaratory Ruling and Notice of Proposed Rulemaking, FCC 99-137, released July 7, 1999 (*CPP Declaratory Ruling*) (*CPP Rulemaking Notice*). The Commission initiated this proceeding two years earlier. *See* Calling Party Pays Service Offering in the Commercial Mobile Radio Services, WT Docket No. 97-207, Notice of Inquiry, 12 FCC Rcd 17693 (1997) (*CPP Notice of Inquiry* or *NOI*).

[2] Pilgrim currently provides presubscribed 1+ services only in the eastern Local Access and Transport Area in the Commonwealth of Massachusetts.

services, including pay-per-call services.[3] Among the information and enhanced services Pilgrim provides are group access bridging, telemessaging and voice mail services, bulletin board services, and access to these various services. Pilgrim provides common carrier services pursuant to tariffs on file with the Commission and with various State commissions.

Pilgrim has participated extensively in rulemaking proceedings before the Commission involving a wide variety of competitive services and service provisioning issues, and has a significant competitive interest in the rules and requirements that may be developed in this proceeding pursuant to Section 251(c)(3) of the Communications Act of 1934 (the Act)[4] regarding the provision of billing information by incumbent local exchange carriers (ILECs) and, more generally, in the rules and requirements that may be developed in this proceeding regarding the provision of billing information by all classes of local exchange carriers (LECs), and regarding the provision of billing and collection services by all classes of LECs.

Pilgrim, by these comments, expresses support for the general proposition that billing information should be treated by the Commission as a network element that must be made available on an unbundled basis pursuant to Section 251(c)(3) of the Act. Pilgrim also argues, however, that requiring the availability of billing information would not be a sufficient step to ensure a fair marketplace test for Calling Party Pays (CPP) services and that, therefore, the Commission should require LECs to provide billing and collection services, upon reasonable request, for CPP offered by commercial mobile radio service (CMRS) providers. Finally, Pilgrim suggests elements and criteria we believe to be essential to the operation of an effective CPP

[3] Pay-per-call services are those services that are subject to regulation under Section 228 of the Communications Act of 1934, 47 U.S.C. § 228, and Sections 64.1501 through 64.1512 of the Commission's Rules, 47 C.F.R. §§ 64.1501-64.1512.

notification system that will safeguard the interests of consumers, and we express the view that the Commission should rely on a notification system and marketplace forces to ensure that CPP providers charge reasonable rates to calling parties.

II. AVAILABILITY OF BILLING INFORMATION

The Commission has sought comment regarding whether it "should mandate that LECs provide to CMRS providers billing information sufficient for the CMRS provider or third parties to bill calling parties for CPP-related calls . . . ."[5] The Commission also asks for comment regarding whether it has jurisdiction to require the provision of billing information by LECs to support CPP-related billing and collection by other entities.[6]

Pilgrim believes that the Commission has jurisdiction to require the provision of billing information and that, as a general matter, such a requirement would serve important consumer and competitive objectives. The availability of real time billing information from LECs, provided at reasonable rates and on reasonable terms and conditions, can furnish service providers in many circumstances with the ability to maintain their own billing and collection operations. It is also Pilgrim's view, however, that, in the specific circumstances relating to CPP, requiring the availability of billing information to CPP providers or third parties would not be a sufficient step to ensure the viability of CPP offerings.

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[4] 47 U.S.C. § 251(c)(3).

[5] *CPP Rulemaking Notice* at para. 62.

[6] *Id*. at para. 66.

A. Commission Jurisdiction

1. Ancillary Jurisdiction

The Commission may establish duties and requirements through the invocation of its ancillary jurisdiction pursuant to Section 4(i) and Section 303(r) of the Act,[7] if the Commission demonstrates that doing so is the only reasonable means by which the Commission can accomplish its statutory responsibilities. As we discuss in Section III, *infra*, Pilgrim believes that the Commission has ancillary jurisdiction to require LECs to provide billing and collection services to CPP providers because the exercise of such jurisdiction is necessary to ensure that statutory objectives are realized.

In Pilgrim's view, the basis for the Commission's ancillary jurisdiction applies with equal force with respect to the issue of making billing information available to CPP providers. If the Commission were to conclude that LECs must provide billing information to CPP providers because CPP providers need access to such information in order to bill for their service, then, for the reasons we discuss in Section III, the Commission may utilize its ancillary jurisdiction to impose such a requirement.

2. Commission Authority under Section 251(c)(3) of the Communications Act

Section 251(c)(3) of the Act requires ILECs to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, non-discriminatory access to network elements on an unbundled basis. The Commission has held that CPP offerings

[7] 47 U.S.C. §§ 154(I), 303(r).

satisfy the relevant statutory definition of CMRS,[8] which, in turn, classifies CPP as a telecommunications service. Thus, CPP providers are within the class of carriers to which ILECs must provide unbundled network elements (UNEs) pursuant to the terms of Section 251. Further, Congress has specified that "network elements," as the term is used in Section 251(c)(3), include "information sufficient for billing and collection . . . ."[9]

Given the provisions of the Act and the Commission's conclusion that CPP is a CMRS offering, we agree with those commenters who have argued in an earlier stage of this proceeding[10] that the Commission has statutory authority to require ILECs to make billing information available to CPP providers on an unbundled basis. This leads to the question of how the Commission should frame access standards under Section 251(d) of the Act[11] in determining what network elements should be made available under Section 251(c)(3).

3. Application of Access Standards under Section 251(d)(2) of the Communications Act

Section 251(d) of the Act provides that the Commission, in deciding what network elements must be made available to telecommunications carriers by ILECs under Section 251(c), must consider, at a minimum, whether access to proprietary network elements is necessary and whether a failure to provide access to network elements would impair a carrier's ability to provide the service it seeks to offer. The Commission notes in the *CPP Rulemaking Notice* that it

[8] *CPP Declaratory Ruling* at para. 16.

[9] Section 3(29) of the Act, 47 U.S.C. § 153(29).

[10] *See* SBC Comments to NOI at 4-5; CTIA Reply Comments to NOI at 5-6.

[11] 47 U.S.C. § 251(d).

currently is developing criteria under Section 251(d) to apply the statutory "necessary" and "impair" standards.[12]

Pilgrim, in comments filed in response to the *UNE Second Notice*, argues that billing information (including customer name, address, and telephone number; and blocking information) should not be treated as proprietary information and therefore should not be subject to any analysis under Section 251(d)(2)(A) regarding whether access to the information is "necessary."[13]

Pilgrim next contends that the Commission should develop a test pursuant to the Section 251(d)(2)(B) "impair" standard under which a carrier's ability to provide telecommunications services would be considered to be materially impaired if an ILEC's denial of access to a UNE causes an increase in costs or a decrease in service quality that is not inconsequential or unimportant, or causes a change in the manner in which the carrier provides its services or conducts its business.[14]

Pilgrim also argues that the Commission would exceed its authority under the statute if it chose to impose an "essential facilities" rule[15] in place of the "necessary" and "impair" tests

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[12] *CPP Rulemaking Notice* at para. 66, citing Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Second Further Notice of Proposed Rulemaking, FCC 99-70, released Apr. 16, 1999 (*UNE Second Notice*); AT&T v. Iowa Utils. Bd., 119 S.Ct. 721 (1999). The Commission adopted rules based upon the *UNE Second Notice* in an action voted by the Commission on September 15. *See* Fed. Comm. Comm'n News Release, "FCC Promotes Local Telecommunications Competition," Sept. 15, 1999.

[13] *UNE Second Notice*, Comments of Pilgrim Telephone, Inc., filed May 26, 1999 (Pilgrim UNE Comments) at 7-10. Pilgrim also contends in the UNE rulemaking proceeding that billing and collection functions should be treated as network elements and made available on an unbundled basis. Pilgrim's views regarding whether LECs should be required to provide billing and collection functions to CPP providers are discussed in Section III, *infra*.

[14] Pilgrim UNE Comments at 15.

[15] "Where it applies, the essential facility doctrine imposes on a monopolist a duty to share a qualifying 'essential facility.'" IIIA PHILLIP E. AREEDA & HERBERT HOVENKAMP, ANTITRUST

established by Congress in subparagraphs (A) and (B) of Section 251(d)(2). We contend in our comments in response to the *UNE Second Notice* that there is no reasonable basis for concluding that Congress intended to graft the "essential facilities" standard into Section 251(d) and that the best evidence for this is that Section 251(d), on its face, establishes standards for access to network elements that do not make any reference to, or incorporate, the "essential facilities" standard.[16] Pilgrim also asserts that, even if the Commission chooses to impose an "essential facilities" test, UNEs relating to billing and collection services, real time billed name and address, and customer blocking information should be treated as "essential facilities" because they cannot be reasonably duplicated by service providers such as Pilgrim and access to these elements is necessary to enable carriers such as Pilgrim to compete.[17]

Finally, Pilgrim contends that the statute specifies that the Commission must "at a minimum"[18] apply the "necessary" and "impair" criteria established in Section 251(d)(2), but that the statute gives the Commission discretion to develop additional criteria and factors in determining whether ILECs must provide access to particular types of UNEs under Section 251(c)(3). Pilgrim argues that the UNE access standards must be developed by the Commission in the context of the overall framework of congressional directives encompassed in the

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LAW ¶ 771a (1996). "The core concern of the doctrine is that a monopolist possesses a resource that is 'essential' in some sense for the business of someone else, but that the monopolist refuses to share." *Id*. at ¶ 772a.

[16] Pilgrim UNE Comments at 10-12.

[17] *Id*. at 12, citing Fishman v. Estate of Wirtz, 807 F.2d 520, 539 (7th Cir. 1986).

[18] 47 U.S.C. § 251(d)(2).

amendments made to the Act by the Telecommunications Act of 1966[19] — directives intended to enhance competition, to accelerate deployment of new technologies and services to the public, and to require ILECs to provide unrestricted and non-discriminatory access both to network elements that are subject to the unbundling requirements of Section 251 and to all network elements that ILECs also provide to their own affiliates.[20] Pilgrim contends more specifically that the Commission should expand the list of UNEs based upon its application of access standards under Section 251(d)(2) in order to comport with the "checklist" provisions of Section 271(c)(2)(B) of the Act.[21]

B. Policy Considerations

1. In General

Pilgrim believes that, as a general matter, there are strong policy reasons for the Commission to develop and apply network element access standards under Section 251(d)(2) of the Act that untangle the ILEC stranglehold over billing information. Consumers and competition will benefit if competitive local exchange carriers, interexchange carriers (IXCs), other telecommunications service providers, and information service providers are able to utilize this billing information in connection with the provision of their services.

For example, as Pilgrim notes in commenting on the *UNE Second Notice*, the Commission should require access to ILEC databases and signaling that relate to customer service preferences, including collect call blocking, third party bill blocking, and blocking for international calls and

[19] Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act).

[20] Pilgrim UNE Comments at 15-17.

[21] 47 U.S.C. § 271(c)(2)(B).

900 number services.[22] These requirements, in giving service providers more control over their billing and collection operations, will make them stronger competitors, thus generating benefits for consumers in the form of a wider array of service offerings available at competitive prices. Moreover, the availability of billing information on an unbundled basis will also promote entry by new providers of a variety of telecommunications services and information services, thus fostering competition and benefiting consumers.

2. Billing Information and Calling Party Pays

Although Pilgrim has advocated that the Commission should, as a general matter, treat the various components of billing information as UNEs under the terms of Section 251 of the Act, Pilgrim also believes that considerations relevant to CPP compel the conclusion that the availability of billing information would not in itself be a sufficient step to ensure that CPP could be fairly tested in the marketplace.

The problem faced by CPP providers is both simple and daunting: How can the CPP provider successfully render a bill and accomplish the collection of fees for its services from calling parties whose calls traverse the CPP provider's system only on an occasional basis and with whom the CPP provider has no prior carrier-customer relationship? This problem of recouping service charges from the occasional calling party leaves CPP providers with a number of less than optimum choices:[23]

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[22] Pilgrim UNE Comments at 18.

[23] The Commission, in seeking comment regarding LEC-provided billing and collection, has also noted that it is "particularly interested in the availability of alternative methods of CPP-related billing and collection . . . ." *CPP Rulemaking Notice* at para. 55. *See also id.* at para. 61.

First, the CPP provider could gain unbundled access to LEC billing information and issue its own bills to calling parties. This, of course, would fly the CPP service provider into the teeth of the uncollectibles problem — if the CPP provider endeavors to send its own bill to a calling party who, for example, placed one call in the past month[24] over the CPP provider's system, it is not unreasonable to expect a fairly high percentage of cases in which the calling party is simply not going to bother to put a check in the mail.[25] Further, even if one were to assume *arguendo* that the percentage of uncollectibles would not be high, the investment that the CPP provider would need to make in constructing and maintaining a billing system to issue monthly bills in small amounts to multitudes of occasional callers conceivably could overrun the revenue stream that would be provided by these callers.[26]

Second, the CPP provider could seek to render bills in conjunction with a "clearinghouse" that would use billing information to facilitate the issuance of bills on behalf of CPP providers who choose to contract for such a service. Such an arrangement could solve the problems

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[24] MCI, in examining the issue of billing for non-subscribed services provided by IXCs, has noted that 60 percent of the bills it sends for its "1-800-COLLECT" service are for one call. MCI, Petition for Rulemaking, Billing and Collection Services Provided by Local Exchange Carriers for Non-Subscribed Interexchange Services, filed May 19, 1997, at 7 (MCI Petition). *See* Fed. Comm. Comm'n, Public Notice, "MCI Telecommunications Corporation Files Petition for Rulemaking Regarding Local Exchange Company Requirements for Billing and Collection of Non-Subscribed Services," DA 97-1328, released June 25, 1997.

[25] The difficulty of collecting CPP charges from calling parties, in Pilgrim's view, overshadows any "technological developments in intelligent network (IN)-type platforms and new billing software programs" that might be used in connection with the rendering of bills by CPP providers. *CPP Rulemaking Notice* at para. 61.

[26] MCI has estimated that its average billed amount per service for non-subscribed services is $6.82, while the cost of sending an invoice to a non-subscribed customer is $3.47 per invoice. "Because of the fact that high billed amounts per invoice originate from only a small percentage of non-subscribed services customers, less than half of such invoices would be profitable." MCI Petition at 7.

associated with the CPP provider's attempting to construct and operate its own billing system (although the CPP provider would incur costs in contracting for the clearinghouse service), but this approach would not seem to provide an answer to the uncollectibles problem. If the clearinghouse sought to generate bills for CPP providers, the bills issued by the clearinghouse would likely be in small amounts to calling parties who are infrequent users of wireless networks and who do not have any carrier-customer relationship with CPP providers. Moreover, US West, in supporting the clearinghouse approach as a solution to the "leakage" (or uncollectibles) problem, indicates that the clearinghouse would serve as "a carrier agent through which all carriers offering CPP billing service . . . could identify calling parties in their respective customer bases and implement billing and collection measures."[27] Thus, the successful operation of the clearinghouse would depend upon LEC participation. If a LEC chose not to participate in the clearinghouse, then the clearinghouse mechanism would not solve the uncollectibles problem regarding calling parties in that LEC's service area. It is not unreasonable to conclude, therefore, that reliance upon the clearinghouse mechanism would pose a significant business risk for CPP providers.

Third, the CPP provider could attempt to utilize LEC-provided billing information in conjunction with arranging with credit card companies to generate bills to calling parties. Such an approach could solve some problems, but would also likely lead to other difficulties. Bills provided by credit card companies would free CPP providers of the need to build and operate their own billing systems, and could also reduce uncollectibles because the charge for the wireless call would be a line item on the calling party's monthly credit card bill.

[27] US West Comments to NOI at 7.

On the other hand, there is a fairly high percentage of prospective callers who do not have credit cards.[28] If call completion (and revenues to the CPP provider) are dependent on credit card use, then opting for this type of billing arrangement brings with it a built-in risk of lost traffic and lost revenues. Further, it is likely there would be some percentage of credit card holders who would terminate their effort to place calls over the CPP provider's network, in order to avoid the inconvenience or annoyance of punching in a credit card number, or because they simply prefer not to use a credit card for the transaction.

Fourth, the CPP provider could seek to use LEC-provided billing information in conjunction with contracting with other utilities (such as electric utilities) for the inclusion of CPP charges on monthly bills rendered by these utilities. Although such arrangements would save the CPP provider from the task of building its own billing system, they would also have several drawbacks. For example, there would be a subset of calling parties (*e.g.*, residents of apartments in which utilities are provided by the apartment owner) who may not receive monthly bills from electric or gas utilities. There also would be a subset of utility companies who would not want to enter into billing arrangements with CPP providers, or who might seek to do so at rates, or with terms and conditions, that would make the arrangements uneconomic from the perspective of the CPP provider. Further, the inclusion of CPP charges on electric or gas utility bills could lead to customer confusion, inquiries, complaints (due to the lack of any obvious nexus between the

[28] In 1995, 34 percent of households in the United States did not have general use credit cards. BUREAU OF THE CENSUS, U.S. DEP'T OF COM., STATISTICAL ABSTRACT OF THE UNITED STATES 1998, Table 823. This consideration may be accentuated in the case of CPP offerings because, in the Commission's view, "CPP holds the potential . . . to spur further competition by offering a different service option that may be particularly attractive to low-income . . . consumers." *CPP Rulemaking Notice* at para. 3.

utility bill and the call to a CPP subscriber), and the attendant administrative costs to the utility and to the CPP provider.[29]

Finally, the service provider could eschew any utilization of LEC-provided billing information, instead offering a limited version of CPP. The CPP provider's customers could receive CPP calls from areas in which the provider has billing and collection arrangements with LECs, but calls from other areas would be blocked. Under another variant, the CPP provider could charge its own subscriber for calls originating in areas in which LECs refuse to provide billing and collection. Either approach would minimize the service provider's uncollectibles, but would make the CPP offering less attractive to customers. It is not unreasonable to surmise that wireless customers would find it confusing and inconvenient to subscribe to a "quasi-CPP" service in which they would be paying airtime for some calls but not for others or in which they would receive CPP calls from some areas but not from others. In fact, in Pilgrim's view, either of these modifications of CPP, resulting from the unavailability of LEC billing, would likely cause CPP to fail in the marketplace.[30]

III. PROVISION OF BILLING AND COLLECTION SERVICES BY LOCAL EXCHANGE CARRIERS

The problems inherent in limiting LEC involvement in CPP billing and collection to the provision of billing information lead Pilgrim to conclude that the only practical way to enable CPP

[29] MCI has indicated that it has explored billing partnerships with non-carriers, such as cable companies, public utilities, waste collection agencies, credit card companies, and banks, and has concluded that such arrangements are not practical. To cite one problem, MCI notes that "[t]he complexities of matching MCI's billing system for non-subscribed, long-distance customers to these parties' billing and collection capabilities is immense." MCI Petition at 9.

providers to bring a viable service to the marketplace is for the Commission to require that LECs provide billing and collection to CPP providers upon reasonable request. We examine in this section the Commission's jurisdictional authority for imposing such requirements,[31] and the policy considerations supporting the exercise of this authority.

A. Commission Ancillary Jurisdiction

1. In General

The Commission may exercise its ancillary jurisdiction if it determines that doing so "is imperative if it is to perform with appropriate effectiveness certain of its other responsibilities."[32] In applying this test, the Commission already has found that it has authority to regulate LEC billing and collection through the exercise of its ancillary jurisdiction.[33] The Commission has held that LEC billing and collection "is incidental to the transmission of wire communication and thus

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[30] The fact that the withholding of LEC billing and collection could imperil the marketplace success of CPP suggests that some LECs may have an anticompetitive motive in refusing to provide billing and collection. For a further discussion of this issue, see page 33, *infra*.

[31] The Commission has sought comment regarding its statutory authority to prescribe billing and collection requirements. *CPP Rulemaking Notice* at para. 64.

[32] United States v. Southwestern Cable Co., 392 U.S. 157, 173 (1968). The Supreme Court has noted that Congress, in enacting the Communications Act, chose to give the Commission "'expansive powers[,]'" *id*. (quoting National Broadcasting Co. v. United States, 319 U.S. 190, 219 (1942)), and that the Court "may not, 'in the absence of compelling evidence that such was Congress' intention . . . prohibit administrative action imperative for the achievement of an agency's ultimate purposes.'" *Id*. at 177 (quoting Permian Basin Area Rate Cases, 390 U.S. 747, 780 (1968)).

[33] Detariffing of Billing and Collection Services, CC Docket No. 85-88, Report and Order, 102 F.C.C. 2d 1150, 1169 (para. 36) (1986) (*Billing and Collection Order*). The Commission cited Section 4(i) of the Act, 47 U.S.C. § 154(i), which empowers the Commission to "perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions."

is properly considered a communications service under section 3(a) of the Act . . . ."[34] Although the Commission has found that billing and collection is not a common carrier service[35] and thus is not subject to regulation under Title II of the Act,[36] the Commission also has concluded in the *Billing and Collection Order* that this finding does not nullify a basis for Commission jurisdiction.

The central question for the Commission to examine is whether there are policy considerations that justify the exercise of the Commission's ancillary authority to require LECs to provide billing and collection services to CPP providers. Pilgrim believes that there are.

The Commission has found that "[t]he exercise of ancillary jurisdiction requires a record finding that such regulation would 'be directed at protecting or promoting a statutory purpose.'"[37] Pilgrim believes that the application of this test leads to the conclusion that LECs should be required to provide billing and collection services to CPP providers. Providing CMRS carriers with an opportunity to offer CPP will serve important statutory objectives. A failure to require LECs to provide billing and collection will seriously undermine the ability of CMRS carriers to roll out viable CPP offerings that can be tested in the marketplace. The imposition of such billing and collection requirements will not impose any unreasonable costs or burdens on the LECs.

2. Statutory Purposes

[34] Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, CC Docket No. 91-115, Report and Order and Request for Supplemental Comment, 7 FCC Rcd 3528, 3533 n.50 (para. 26) (1992) (*Calling Card Order*).

[35] We note that parties in this proceeding have taken issue with this Commission conclusion. See note 80, *infra*.

[36] *Billing and Collection Order*, 102 F.C.C. 2d at 1167-69 (paras. 30-34).

[37] *Id*. at 1170 (para. 37) (quoting Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), Docket No. 20808, Final Decision, 77 F.C.C. 2d 384, 433 (1979)).

The offering of CPP will serve at least three important statutory purposes,[38] which we discuss in turn in the following sections.

a. Local Exchange Competition

First, Pilgrim believes, along with the Commission, that "the potential exists in the U.S. for the wider availability of CPP offerings to benefit the development of local [exchange] competition . . . ."[39] The hallmark of the 1996 Act is to promote competition in all telecommunications markets, including the local exchange marketplace. The Commission has listed the "opening [of] the local exchange and exchange access markets to competitive entry" as the first of the three principal goals of the telephony provisions of the 1996 Act.[40]

The text of the 1996 Act instructs the Commission to "promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies."[41] In enacting the 1996 Act, Congress expressed its intent to "provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector

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[38] Parties in this proceeding also have suggested other statutory objectives that would be served by exercise of the Commission's ancillary jurisdiction. *See* AirTouch Comments to NOI at 19; Omnipoint Comments to NOI at 14.

[39] *CPP Rulemaking Notice* at para. 1.

[40] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 95-185, First Report and Order, 11 FCC Rcd 15499, 15505 (para. 3) (1996). The other two congressional goals cited by the Commission are promoting increased competition in markets already open to competition, such as the long distance market, and reforming the universal service system. *Id*.

[41] 1996 Act, 110 Stat. at 56 (preamble). The potential tension between these twin goals of promoting competition and reducing regulation is discussed in Section III.B.3, *infra*.

deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition."[42]

The arrival of CPP holds the prospect of serving this statutory objective by increasing wireless telephone usage and fundamentally changing the manner and extent to which subscribers rely upon and utilize their wireless phones. The Commission has identified the benefits that CPP may provide:[43]

> CPP holds the potential for making mobile wireless services more attractive to large numbers of customers who do not subscribe today, and spurring the acceptance and development of services offered by mobile wireless telecommunications providers as competitive alternatives to the services of local exchange carriers . . . . There is significant evidence that CPP would help encourage CMRS subscribers to leave their handsets on and available to receive incoming calls because they would not be incurring as high a cost for receiving calls on a usage-sensitive basis. This increases the use of mobile wireless services, and provides certain benefits to both calling parties, who otherwise would not be able to complete calls to CMRS subscribers who keep their phones off, and to CMRS subscribers, who would no longer have an economic incentive to avoid or minimize the acceptance of calls.

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[42] Joint Statement of Managers, H.R. Conf. Rep. No. 104-458, 104th Cong., 2d Sess., at 113 (1996) (1996 Act Conference Statement). The Commission has often acknowledged this statutory purpose. *See, e.g.*, Telephone Number Portability, CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, 8354 (para. 2) (1996); Implementation of the Telecommunications Act of 1996, CC Docket No. 96-115, Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, As Amended, CC Docket No. 96-149, Order on Reconsideration and Petitions for Forbearance, FCC 99-223, released Sept. 3, 1999, at para. 3. *See also* Michael K. Powell, Essay, *Communications Policy Leadership for the Next Century*, 50 FED. COMM. L.J. 529, 532 (1998).

[43] *CPP Rulemaking Notice* at para. 3. *See* US West Comments to NOI at 2 (recognizing "the possibility that increased availability of a robust CPP billing option could help foster development of CMRS as a competitive alternative to landline local exchange services.").

Pilgrim agrees with the Commission that there is a strong nexus between the promotion of a regulatory framework that facilitates a fair test for CPP in the marketplace and the realization of statutory objectives to promote local exchange competition. The shift in wireless usage patterns that the Commission suggests may be accomplished by CPP would enhance the continued emergence of wireless service as an alternative to consumer reliance on LEC-provided wireline dial tone for local exchange traffic.

b. Wireless Marketplace Competition

The second statutory purpose that would be served by CPP is the promotion of competition in the wireless marketplace. Congress took a major step in promoting a competitive wireless marketplace in 1993 by establishing a consistent regulatory classification for all mobile services, and by enacting a system of competitive bidding for spectrum licensing.[44]

The Commission has noted that Congress, in the amendments made by the 1993 Budget Act, replaced the common carrier and wireless carrier classifications with the intent of ensuring that similar wireless services are accorded similar regulatory treatment.[45] Congress, by creating this "level playing field" for mobile service providers, sought to promote competition in the wireless marketplace, and, in implementing the amendments made by the 1993 Budget Act, the Commission vowed to:[46]

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[44] *See* Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 312 (1993) (1993 Budget Act) (amending Sections 309 and 332 of the Act).

[45] Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411, 1418 (para. 13) (1994), *recon. pending* (citing H.R. Rep. 103-213, 103rd Cong., 1st Sess. 494 (1993) (Conference Report)).

[46] *Id*. at 1420 (para. 19).

> continue our efforts to foster competition in the mobile marketplace [by interpreting] the elements of the [statutory] commercial mobile radio service definition in a manner that ensures that competitors providing identical or similar services will participate in the marketplace under similar rules and regulations. Success in the marketplace thus should be driven by technological innovation, service quality, competition-based pricing decisions, and responsiveness to consumer needs — and not by strategies in the regulatory arena. This even-handed regulation, in promoting competition, should help lower prices, generate jobs, and produce economic growth.

The 1993 Budget Act also promoted competitive goals by establishing a legislative mechanism authorizing the Commission to use competitive bidding in granting licenses and permits for spectrum use. The legislation required the Commission, in designing systems of competitive bidding, to promote economic opportunity and competition.[47]

Commission actions to facilitate the offering of CPP will protect and promote this legislative objective of enhancing competition in the wireless marketplace. The Commission has observed, for example, that:[48]

> CPP holds the potential for making mobile wireless services more effectively available to large numbers of customers who do not subscribe today or who strictly limit their usage, and to spur further competition by offering a different service option that may be particularly attractive to low-income, and low-volume and mid-volume consumers.

Thus, wireless carriers who can successfully bring CPP service options to the marketplace would have the opportunity to enhance their competitive position through increased subscribership and increased traffic on their networks.

c. Spectrum Efficiency

[47] *See* Section 309(j)(3)(B) of the Act, 47 U.S.C. § 309(j)(3)(B).

[48] *CPP Rulemaking Notice* at para. 5.

From its inception, the Commission has been charged with the statutory responsibility to promote and ensure efficient radio communications.[49] Because the electromagnetic spectrum is a valuable public resource, Congress recognized that its efficient use will provide important public benefits, and that effective spectrum management is an essential factor in achieving the goal of efficient spectrum use.

The competitive bidding process for the award of spectrum licenses is one means by which this statutory responsibility is fulfilled, in that the use of competitive bidding is intended to ensure that spectrum is awarded to carriers and other service providers who have placed the highest value on the spectrum being awarded. This market-driven valuation in turn ensures that successful bidders in the spectrum auction process have an incentive to utilize the licensed spectrum efficiently, in order to maximize the return on their investment.

In addition to designing the competitive bidding process, the Commission has initiated numerous rulemaking proceedings intended to promote efficient spectrum use. To take one example, the Commission has engaged in a comprehensive effort to develop a spectrum "refarming" plan to encourage more efficient use of private land mobile radio spectrum below the 800 MHz band and to promote the introduction of advanced technologies into private mobile services.[50] More recently, the Commission has acted to maximize the efficient and effective use of

[49] *See* Section 1 of the Act, 47 U.S.C. § 151.

[50] *See* Replacement of Part 90 by Part 88 To Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Services, PR Docket No. 92-235, Report and Order and Further Notice of Proposed Rulemaking, 10 FCC Rcd 10076 (1995), Second Report and Order, 12 FCC Rcd 14307 (1997).

spectrum in the 218-219 MHz spectrum band by broadening its use to permit both common carrier and private operations.[51]

The successful roll out of CPP service options would contribute to the pursuit of this statutory objective. Spectrum efficiency is not merely a product of engineering and spectrum management decisions but also, as the competitive bidding legislation demonstrates, can be promoted through establishing economic and competitive incentives. As the Commission has already noted in the *CPP Rulemaking Notice*, CPP promises to increase subscribership and wireless traffic volumes. An ongoing objective of wireless carriers, as they have made substantial investments in network infrastructure, has been to increase network usage, so that traffic-handling capacities are more extensively utilized and resulting revenues help defray the investment costs incurred in deploying the wireless networks.[52]

The CPP service option is intended to work toward this result — wireless subscribers are likely to accept incoming calls in greater volumes if they are not responsible for airtime charges for these calls, and they are also likely to disseminate their wireless numbers more extensively than they currently do, which, in turn, is likely to generate a greater volume of wireless network traffic. If the Commission can take the steps necessary to enable CMRS carriers to create incentives to spur these changes in the usage patterns and practices of their customers, then the Commission will have moved successfully toward accomplishing its statutory responsibility to promote spectrum efficiency.

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[51] *See* Amendment of Part 95 of the Commission's Rules To Provide Regulatory Flexibility in the 218-219 MHz Service, WT Docket No. 98-169, Report and Order and Memorandum Opinion and Order, FCC 99-239, released Sept. 10, 1999.

[52] *See* Gregory L. Rosston & Jeffrey S. Steinberg, *Using Market-Based Spectrum Policy To Promote the Public Interest*, 50 FED. COMM. L.J. 87, 99 (1997).

B. The Need for Local Exchange Carrier Billing and Collection

In adopting the *CPP Rulemaking Notice,* the Commission has taken an important step toward protecting and promoting the pro-competitive and spectrum efficiency objectives of the Act. Having taken that step, the Commission must now avoid the suggestion of those parties who argue or imply that half measures will be a sufficient demonstration of the Commission's resolve to give CPP an opportunity to work in the telecommunications marketplace. The *CPP Rulemaking Notice* sets the stage for devising a regulatory framework to provide this marketplace opportunity, and Pilgrim believes that a LEC billing and collection requirement is a critical component of that framework.

The Commission has the responsibility to exercise its ancillary jurisdiction in order to require the LEC provision of billing and collection for CPP if it determines that doing so will protect or promote statutory purposes. Pilgrim believes there are three reasons why such a determination is necessary: LEC billing and collection will make the CPP service option viable; other methods of billing and collection will not suffice in giving CPP a fair test in the marketplace; and the imposition of billing and collection requirements is warranted in this case because the circumstances confronting the Commission here are different in all respects from those leading to the Commission's action in the *Billing and Collection Order*.[53]

1. Local Exchange Carrier Billing and Collection Enables Calling Party Pays To Work

[53] A fourth reason — that there are no appreciable drawbacks to imposing billing and collection requirements — is discussed in Section III.C, *infra*.

The fact of the matter is that LEC billing systems, because of the virtual ubiquity of their coverage,[54] their operational efficiency, and their economies of scale, represent the only practical means currently available by which CPP providers can efficiently bill and collect for their services. A service option cannot survive if its provider cannot bill and collect for it.[55] We have discussed these CPP billing and collection problems in a previous section,[56] and will return to this issue in the following section, but it suffices to say here that LEC billing and collection is the single and most comprehensive solution to these problems.

If CPP providers are able to receive billing and collection functions from LECs, these arrangements will ensure that bills will be rendered for a high percentage of calling parties placing calls that are routed and terminated on the CPP providers' systems. This is true because it is reasonable to expect that a high percentage of calling parties will have a pre-existing carrier-customer relationship with a LEC and will be using the LEC's facilities to originate the call. It is also likely that a high percentage of CPP calls that are billed through the use of LEC billing mechanisms will be successfully collected. The pre-existing carrier-customer relationship between the LEC and the calling party contributes to this expectation.

In addition, if the Commission prescribes sufficient notification requirements, then the calling party should not be surprised by the CPP entry on the LEC-generated bill because the calling party will have been advised by the notification that he or she will be charged for the call.

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[54] As of November 1998, according to the Bureau of the Census Current Population Survey, 94.2 percent of all households in the United States had access to a telephone. INDUSTRY ANALYSIS DIV., COMMON CARRIER BUR., FED. COMM. COMM'N, TRENDS IN TELEPHONE SERVICE, Feb. 1999, Table 17.1 (Household Telephone Subscribership in the United States).

[55] *See* Vanguard Comments to NOI at 2 ("[W]ithout billing and collection, CMRS providers will be unable to obtain revenue for the services they provide.").

[56] See Section II.B.2, *supra*.

Moreover, it generally should be the case that the amount of the CPP charge will be a relatively small increment of the calling party's overall monthly LEC bill, and this fact also should facilitate payment of the charge. In this regard, Pilgrim agrees with the observation of AirTouch Communications Inc. that "[i]n some cases, the billed amount is less than the cost of postage to mail the bill; in this instance separate bills from different carriers are much less effective than a single bill."[57]

Finally, we support suggestions made in this proceeding that the Commission, as part of requiring that LECs supply billing and collection functions to CPP providers, should establish interim and long-term policies to ensure that these functions are provided in a fair and consistent manner throughout the Nation.[58] If the Commission fails to take this step, then CPP providers would be faced with the prospect of sorting out rates, terms, and conditions for billing and collection with hundreds of LECs. This would be a burdensome, time-consuming, and costly endeavor for CPP providers, and would also hamper their ability to offer CPP in a unified manner in all regions of the Nation.

2. Other Billing and Collection Methods Will Not Work

A refusal by the Commission to exercise its ancillary jurisdiction to require LECs to provide billing and collection for CPP could be viewed as a reasonable exercise of the Commission's discretion if the Commission were to determine that the relevant statutory purposes could be protected and promoted in the absence of such a requirement. The Commission could reach such a determination based on either of two conclusions — that the offering of CPP does

[57] AirTouch Comments to NOI at 17. See note 26, *supra*.

[58] *See, e.g.*, Omnipoint Comments to NOI at 8-12.

not constitute a significant means of advancing the statutory objectives; or that CPP does hold such promise, but LEC billing and collection is not needed to enable CPP to contribute to the realization of the statutory objectives.

The Commission, in Pilgrim's view, already has concluded that CPP holds the potential to spur development of local competition,[59] and the Commission has initiated this rulemaking for the purpose of determining and invoking the regulatory actions necessary to ensure that this potential is realized. This leaves us with the question of whether CPP can work without LEC billing and collection.

In short, it cannot. As we have described in our discussion of the use of LEC billing information,[60] there is no practical and effective means of solving the uncollectibles problem in the absence of LEC billing, and the likely nature and extent of this problem would seriously threaten any effort to bring CPP to the marketplace. US West has provided a description of the scope of the problem:[61]

> In those instances where a . . . CPP subscriber receives a call from a phone served by a non-participating LEC or in a non-participating state, the CPP option simply does not work. The wireless CPP subscriber experiences "leakage" — where the originating caller cannot be billed for the call. When there is leakage, either [the CPP provider] has to absorb the charges for the call, or . . . assign the charges to its CMRS subscriber.

In assessing the problem, it also is important to keep in mind that uncollectible bills have generally been a problem plaguing the wireless industry. "Wireless providers have the highest

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[59] *See CPP Rulemaking Notice* at paras. 1, 3. Pilgrim has argued that CPP would also serve to promote additional statutory objectives. See Section III.A.2, *supra*.

[60] See Section II.B.2, *supra*.

[61] US West Comments to NOI at 5-6 (footnote omitted).

delinquency rates, with as much as 7 percent of the revenue left uncollected."[62] These delinquency rates involve efforts to collect from subscribing wireless customers, and wireless carriers have some options available to reduce uncollectibles in this context (such as utilization of prepaid services and creditworthiness checks). On the other hand, efforts to combat uncollectibles in the CPP context would be more difficult because there is no pre-existing carrier-customer relationship between the CPP provider and the calling party. In these circumstances, the LECs' bill collecting prowess[63] becomes the only practical means of reducing the risk of uncollectibles faced by CPP providers.

As we also have noted in our discussion of billing information, Pilgrim believes that all the alternatives to LEC billing and collection are plagued by problems that make them untenable for use by CPP providers. Each of the alternatives that could be considered as a substitute for LEC billing and collection — the CPP provider establishing its own billing and collection systems; the use of billing clearinghouses; the use of credit card billing; the use of electric utilities or other utilities for billing and collection; offering a scaled back version of CPP — would bring with it disadvantages that would seriously compromise efforts to roll out CPP.

3. Application of Billing and Collection Order Criteria

Much has been made, in some of the comments to the *CPP Notice of Inquiry*, of the fact that the Commission has previously acted to detariff the LEC provision of billing and collection to IXCs.[64] In Pilgrim's view, however, CPP presents the Commission with a case having important

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[62] John Salak, *Zero-Bum Game*, TELE.COM, Apr. 1, 1997.

[63] *Id*. ("Local telephone operators now have the highest collection rates among service providers, reflecting their exclusive hold on their home markets.").

[64] *See, e.g.*, SBC Comments to Noi at 4.

differences when compared with the factors that led to the Commission's decision in the *Billing and Collection Order*.

The Commission relied on three factors in deciding not to invoke its ancillary jurisdiction to require the continued tariffing of LEC billing and collection services provided to IXCs. First, the Commission reached the conclusion that "there is sufficient competition to allow market forces to respond to excessive rates or unreasonable billing and collection practices on the part of exchange carriers . . . ."[65] The Commission defined this competition as consisting, in part, of credit card companies, collection agencies, and service bureaus. Second, the Commission found that IXCs could meet their own billing and collection needs, and this would "put downward pressure on LEC rates."[66] Third, the Commission concluded that "detariffing will enhance competition in the billing and collection market by giving the LECs flexibility in structuring and pricing their offerings."[67]

None of these factors carries any weight in analyzing whether the Commission should require LECs to provide billing and collection services to CPP providers. First, the market presence of credit card companies and other billing and collection agents may provide reasonable alternatives to IXCs, but they do not serve the same purpose for CPP providers. As we have discussed in previous sections, Pilgrim believes there is persuasive evidence indicating that credit card companies, clearinghouses, electric utilities, or other third party billing agents cannot accomplish billing and collection for CPP providers in a manner sufficient to ensure an acceptably

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[65] *Billing and Collection Order*, 102 F.C.C. 2d at 1170 (para. 37). Interestingly, the Commission did not seem to envision circumstances in which the LECs would *refuse* to provide billing and collection to IXCs.

[66] *Id*.

[67] *Id*. at 1171 (para. 38).

low level of uncollectibles. These competitive billing and collection alternatives are more likely to work in the context of IXC services because the IXCs have pre-existing carrier-customer relationships.[68] But CPP providers, in trying to collect from calling parties who use the CPP providers' networks only on an occasional basis, simply would incur too great a business risk in relying on the competitive billing and collection alternatives which played such an important role in the Commission's decision in the *Billing and Collection Order*.

Second, even assuming *arguendo* that IXCs are well positioned to do their own billing and collection,[69] such an assumption does not hold up with respect to CPP providers. As we have illustrated in a previous section,[70] it is reasonable to conclude that CPP providers attempting to do their own billing would experience high rates of uncollectibles and that the investments associated with constructing and operating the billing systems would threaten to make CPP offerings uneconomic.

Finally, acting to impose billing and collection requirements in the case of CPP would not unravel the Commission's efforts in the *Billing and Collection Order* to enhance billing and collection competition by giving the LECs flexibility in structuring and pricing their offerings. The Commission would have considerable discretion to craft billing and collection requirements in a manner that would serve the needs of CPP providers that have been identified in this

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[68] MCI has pointed out, however, that "there are no realistic alternatives at present to LEC-provided billing and collection for [IXC] *non-subscribed services* . . . ." MCI Petition at ii (emphasis added).

[69] *But see* MCI Petition; *UNE Second Notice*, Reply Comments of Pilgrim Telephone, Inc., filed June 10, 1999, at 10 ("even AT&T has not been successful in building an independent billing and collection system").

[70] See Section II.B.2, *supra*.

proceeding, while at the same time avoiding any detrimental effects on the LECs' competitive billing and collection endeavors.

Thus, in Pilgrim's view, a Commission decision in this proceeding to require the LECs to provide billing and collection to CPP providers, in addition to serving important statutory objectives by providing the only means by which CPP can effectively be brought to the marketplace, can also stand side by side with the Commission's decision in the *Billing and Collection Order* to free the LECs from any obligation to provide tariffed billing and collection to IXCs. The *Billing and Collection Order* does not need to be overturned or modified. The record in that case, in the Commission's view, did not warrant an exercise of ancillary jurisdiction. The record in this case, Pilgrim submits, compels a different conclusion.

C. Comparison of Benefits and Burdens

Requiring the LECs to provide billing and collection would cause the Commission to tread into the domain of regulation, and the Commission may understandably be reluctant to take such a step because it could be misinterpreted as a deviation from the Commission's resolve to promote and enhance competition, and to rely upon the operation and effects of competition, in telecommunications markets. In this regard, Pilgrim notes that there is a potential tension in the congressional intent to promote both a pro-competitive and a deregulatory telecommunications policy,[71] in that there are cases in which regulation is *necessary* to promote competition.

It becomes the responsibility of the Commission, in seeking to resolve this tension in statutory objectives, to weigh the costs and benefits of taking a regulatory action. Pilgrim believes that the benefits of requiring LEC billing and collection for CPP cannot be overstated because, in our view, LEC billing and collection is the *sine qua non* for the successful roll out of CPP offerings and because CPP will further the statutory objectives of local exchange competition, wireless marketplace competition, and spectrum efficiency.

Pilgrim also believes that the picture remains bright when we turn our attention to the burdens that may accrue from the imposition of billing and collection. First, there is evidence in the record that "[s]ome LECs do offer reasonable arrangements for Calling Party Pays either

[71] *See* 1996 Act Conference Statement at 113; SBC Comments to NOI at 4 (the Commission has described a congressional intent "to provide for a pro-competitive, *deregulatory national policy framework* . . . .") (quoting Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, As Amended, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905, 21907 (para. 1) (1996) (emphasis added by SBC)).

through tariff or contract."[72] Thus, at least some LECs have concluded that any burdens associated with providing billing and collection for CPP are outweighed by the business advantages in offering the service.

Second, there is no reason to suspect or conclude that LECs would not be in a position to recoup the costs associated with providing billing and collection for CPP. Fair compensation for the cost of providing billing and collection must be a necessary component of any Commission decision to prescribe a billing and collection requirement.

Third, concerns about cost recovery are mitigated when one considers the types of costs that have been identified in the record. SBC Communications Inc. (SBC), for example, points to the following "costs, responsibilities, and effects on LEC customers": (1) the LEC would need to notify customers that the LEC was billing and collecting for CPP; (2) the LEC would need to train its personnel to answer customer questions about CPP charges; (3) the LEC would have to decide where to place the CPP charges on the LEC-generated bill, which could require coordination and compliance with State public utility commission directives; and (4) LEC "customers may react to increased bills [resulting from inclusion of CPP charges] by cutting back on services offered by the LEC (*e.g.*, decreasing the number and length of toll calls) that they otherwise would purchase."[73] SBC does not quantify the first three listed costs, responsibilities, and effects, other than to inform the Commission that the customer notification costs would be "expensive."[74] Without a demonstration of the level of these costs, and the extent to which LECs

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[72] AirTouch Comments to NOI at 18 (footnote omitted). *See id*. at 21; *Notice of Inquiry*, 12 FCC Rcd at 17695 (para. 6); US West Comments to NOI at 2-3 (US West has operated as a billing agent for CMRS carriers offering CPP).

[73] SBC Comments to NOI at 16-17.

[74] *Id*. at 17.

could not recover the costs from CPP providers, it would be ill-advised, in Pilgrim's view, to place very much weight on these assertions.

With respect to the prospect of lost revenues from LEC customers because of their reaction to increased monthly bills, the Commission could not find such a concern credible without venturing far into the realm of speculation. Pilgrim believes that, contrary to SBC's assertion, the inclusion of CPP charges on monthly LEC bills is likely to have an insubstantial effect on the billed amounts for individual customers because most customers, from month to month, will place calls to CPP subscribers only on an occasional basis. Even in cases where this is not true, SBC may be underestimating the capacity of its customers to make informed and rational choices regarding their usage of telecommunications services. If the LEC's customers see their monthly bills rising to unacceptable levels, they presumably will be able to ascertain that this is attributable to their CPP calling and they may be likely to decide to cut back *that* calling, as opposed to their usage of LEC services. Or they may decide that the rise in monthly bills is acceptable because of the value they place on their calls to CPP subscribers. In any event, to the extent the LEC's revenue from its customers is generated by flat-rated monthly charges for local service, the LEC might be insulated from the untoward effect described by SBC. Finally, and most importantly, it is not at all clear why such a concern should be viewed as relevant. In fact, it may be more appropriate for the Commission to consider that a refusal by a LEC to provide billing and collection to a CPP provider because of concerns about lost revenue for LEC services (which also may be provided by the CMRS carrier in competition with the LEC) may be driven by anti-competitive motives.

Fourth, in weighing the costs and benefits of taking regulatory action with respect to LEC billing and collection, Pilgrim believes that the Commission would do well to keep in mind what is

at the nub of SBC's arguments. SBC asserts that the provision of billing and collection must be the product of negotiation between LECs and CPP providers, that LECs would weigh the potential burdens of providing billing and collection in the context of these negotiations and would make their business judgments accordingly, and that these are not issues that lend themselves to "broad-based federal regulation . . . ."[75]

This would seem to amount to saying that the LECs — not the Commission — should be the decisionmakers when it comes to deciding whether CPP providers can receive billing and collection from the LECs. But Pilgrim submits that the Commission — not the LECs — has the responsibility of deciding whether the Commission must exercise its statutory authority in order to protect and promote statutory purposes, whether the ability of CMRS carriers to offer CPP will enhance these statutory purposes, and whether LEC billing and collection is a critical component of enabling a fair test of CPP in the marketplace.

Finally, in assessing the costs and burdens that some parties ascribe to a billing and collection requirement, the Commission should attempt to discern the business motives that may be driving these assessments.[76] If the Commission is correct in its assumption that "the potential exists . . . for the wider availability of CPP offerings to benefit the development of local competition . . ."[77] then there may be a basis for concluding that some of the LECs have decided that they have a business interest in thwarting any Commission efforts to foster the development of CPP offerings. As the Commission evaluates whether the imposition of billing and collection

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[75] *Id*.

[76] *See CPP Rulemaking Notice* at para. 61 (seeking comment regarding "anticompetitive conduct").

[77] *Id*. at para. 1.

requirements will serve public policy goals, it should seriously consider whether any such efforts are underway to stem the tide of competition in the local exchange marketplace.[78]

Pilgrim agrees that assertions regarding the costs and burdens of billing and collection should be assessed on the merits, and we are confident that the Commission will conclude that any such costs and burdens are outweighed by the benefits to be gained by the provision of LEC billing and collection to CPP providers. But Pilgrim also suggests that the Commission, in reviewing these assertions, should remain cognizant of the possibility that some parties may oppose billing and collection requirements for competitive reasons that are not grounded in concerns about costs and burdens stemming from the requirement to furnish billing and collection.

D. Other Jurisdictional Issues

Pilgrim argues in these comments that there is a strong basis for the Commission to exercise its ancillary jurisdiction to require LECs to make billing and collection services available to CPP providers upon request. We also believe it may be useful here to explore two additional issues relating to the Commission's exercise of its authority to require LEC billing and collection. First, is the Commission restricted from exercising its authority with regard to LEC billing and collection in the case of intrastate CPP calls? Second, should the Commission rely on Section 332 of the Act[79] as an independent source of authority for requiring LEC billing and collection?[80]

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[78] *See* Bruce Hight, *Southwestern Bell Hit with Sanctions*, Austin American-Statesman, Sept. 10, 1999, at D1, D8 ("Some of Southwestern Bell's competitors say that the company finds ways to stall when they seek access to its network and to services — such as [digital subscriber lines] — that they need to compete effectively.").

[79] 47 U.S.C. § 332.

[80] Pilgrim notes that other parties in this proceeding have suggested alternative sources of Commission authority to impose billing and collection requirements, in addition to exercise of its ancillary jurisdiction. *See, e.g.*, Omnipoint Comments to NOI at 12-14 (LEC billing and collection

1. Jurisdiction over Local Exchange Carrier Billing and Collection for Intrastate Calling Party Pays Calls

The Commission has jurisdiction, through the exercise of its ancillary authority, to require LECs to provide billing and collection for interstate services.[81] As Pilgrim has demonstrated, the Commission's exercise of its ancillary authority to require billing and collection in the case of interstate CPP calls is necessary to accomplish important statutory purposes. The sharing of jurisdiction with the States with regard to the regulation of LEC billing and collection for intrastate CPP calls also is necessary to fulfill these statutory purposes.

It would not be rational to attempt to limit the Commission's imposition of LEC billing and collection requirements to interstate CPP calls because it would be costly and burdensome to attempt to design and maintain such a dual billing and collection regime, it would be confusing and inconvenient to calling parties being billed for CPP calls, and, most significantly, it would subject CPP providers to the risk of being unable to bill and collect for intrastate calls.[82] This would risk the viability of CPP offerings in the marketplace which, in turn, would threaten to frustrate congressional objectives embodied in the Act.

Pilgrim agrees with AirTouch that the Commission would have authority to preempt State actions that are shown to be inconsistent with Commission rules requiring the provision of LEC

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for CPP service can be regulated under Title II of the Act as a common carrier communications service); Vanguard Comments to NOI at 2-5 (ILECs can be required to provide billing and collection on a non-discriminatory basis under the provisions of Sections 251 and 272 of the Act). Pilgrim believes that these theories of jurisdiction have merit and should be further examined by the Commission during the course of this rulemaking.

[81] *Billing and Collection Order*, 102 F.C.C. 2d at 1169 (para. 36).

[82] See Section III.B.2, *supra*.

billing and collection for CPP,[83] but we also agree that such preemptive action is not likely to be necessary. The Commission should be able to proceed with the development of billing and collection requirements in a manner wholly consistent with State regulation of billing and collection.

If, however, the Commission were confronted with inconsistent State action, (*e.g.*, affirmative State regulatory action to bar LECs from providing billing and collection services to CPP providers), then Pilgrim believes that Section 2(b) of the Act[84] would not limit the Commission's authority to displace the inconsistent State action in order to accomplish the purposes of Congress. The Commission would need to demonstrate that the matter regulated has both interstate and intrastate aspects; that preemption is necessary to protect valid Federal objectives; and that the State regulation would negate the Commission's exercise of its authority because the interstate and intrastate aspects of the regulated matter cannot be unbundled.[85]

In the case of LEC billing and collection, the Commission could exercise its preemptive authority because billing and collection is incidental to communications that are both interstate and intrastate, preemption would be necessary to sustain the Commission's decision to require LEC billing and collection, this decision is necessary in order to protect and promote Federal statutory purposes, and a State prohibition of LEC billing and collection would frustrate valid Federal purposes because, as we have suggested earlier in this section, there would be no practical way to separate the interstate and intrastate aspects of billing and collection.

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[83] *See* AirTouch Comments to NOI at 24; *see also* CTIA Comments to NOI at 18-19 (arguing that the Commission may preempt inconsistent State regulation of CPP notification).

[84] 47 U.S.C. § 152(b).

[85] *See* Public Serv. Comm'n of Maryland v. F.C.C., 909 F.2d 1510, 1515 (D.C.Cir. 1990). *Cf.* CTIA Comments on NOI at 19-24 (applying this case to the issue of calling party notification).

Alternatively, if the Commission were to adhere to its view that billing and collection is incidental to communications but "is *not* a common carrier service[,]"[86] then it could be argued that Section 2(b) does not circumscribe the Commission's authority to preempt State regulation of billing and collection because Section 2(b) limits the Commission's jurisdiction only with regard to intrastate *common carrier* activities.[87] Thus, the Commission could conclude that it has plenary authority to preempt any State action inconsistent with the Commission's billing and collection requirements.

2. Jurisdiction under Section 332 of the Communications Act

Pilgrim agrees with the contention of AirTouch that Section 332 would not serve as a basis for Commission authority to impose LEC billing and collection requirements in the case of CPP service options.[88] Section 332(c)(1)(B) of the Act[89] authorizes the Commission to require physical connections with commercial mobile radio services. In the case of CPP, the LEC would be serving as a third party billing and collection agent of the CPP provider,[90] which does not appear to be a type of arrangement Congress intended to cover in Section 332 in authorizing the

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[86] *Calling Card Order*, 7 FCC Rcd 3528, 3533 n.50 (para. 26).

[87] "The plain meaning of the language 'of any carrier' [in Section 2(b)(1)] is that the statute applies to communications services provided by common carriers . . . as distinguished from communications services provided by non-common carriers . . . ." People of the State of California v. Fed. Comm. Comm'n, 905 F.2d 1217, 1240 (9th Cir. 1990), *cited in* Jonathan J. Nadler, *Give Peace a Chance: FCC-State Relations after California III*, 47 FED. COMM. L.J. 457, 509 (1995).

[88] *See* AirTouch Comments to NOI at 23.

[89] 47 U.S.C. § 332(c)(1)(B).

[90] *See* Truth-in-Billing and Billing Format, CC Docket No. 98-170, First Report and Order and Further Notice of Proposed Rulemaking, FCC 99-72, released May 11, 1999, at para. 25.

Commission to require interconnection. On the other hand, as we have noted in a previous section,[91] Pilgrim believes that the competitive policies underlying the amendments to Section 332 made by Congress in 1993 serve as one of the bases for the Commission's authority to exercise its ancillary jurisdiction to require LEC billing and collection.

IV. NOTIFICATION TO CALLING PARTIES

The Commission has stated that it is clear that an effective system for calling party notification is a "critically important" component of CPP offerings.[92] Pilgrim supports the Commission's findings regarding the importance of customer notification, and we make several suggestions in the following sections regarding implementation of notification requirements.

A. Need for Nationwide Notification System

The Commission has found, based on the record in this docket, that a notification system will "significantly alleviate confusion on the part of calling parties by providing them the capability to make an informed decision on whether to proceed with completing a call."[93] Pilgrim supports this conclusion. Since the CPP service option will represent a significant change in the way CMRS carriers charge for calls placed on their networks, for the first time billing calling parties for the airtime charges, a notification system informing calling parties that they will be subject to these charges will serve as an important consumer protection measure.

Pilgrim also believes that the notification system should be implemented on a uniform, nationwide basis. Requiring that notification be carried out in a uniform manner ensures that all

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[91] See Section III.A.2.b, *supra*.

[92] *CPP Rulemaking Notice* at para. 30.

[93] *Id*. at para. 33.

consumers will receive the benefit of requirements the Commission establishes regarding the types of information that must be included in notifications provided to parties who are seeking to place calls to CPP subscribers. In addition to this consumer benefit, the uniform, nationwide application of notification requirements established by the Commission will be easier for carriers to implement than a notification system that could vary from State to State or region to region. This ease of implementation will, in turn, benefit consumers by reducing carrier costs caused by designing and implementing the notification system.

B. Mechanics and Content of Notification

The Commission proposes to develop a uniform, verbal notification announcement that would include the following elements: (1) an indication that the calling party is making a call to a CPP subscriber and will be billed for airtime charges; (2) an identification of the CMRS carrier; (3) a specification of the per minute rate and any other charges that the calling party will be charged; and (4) notice that the calling party may terminate the call before incurring any charges.[94]

Pilgrim supports the Commission's proposal because we believe it reflects an effective and reasonable means by which to serve consumer protection objectives by providing pertinent information to calling parties and giving them the opportunity to avoid any CPP-related charges if they so desire. The Commission's proposal also serves its goal of facilitating the introduction and implementation of CPP calling options because the notification system should not be cumbersome or expensive for CPP providers to implement. In addition to voicing our general support for the Commission's proposal, Pilgrim also wishes to address several specific issues in the following sections.

[94] *Id*. at para. 42.

1. Additional Charges; Other Elements of Message

Pilgrim supports the Commission's proposal to include in the notification information regarding "all of the additional charges billed by the CMRS provider to the calling party for the call [,including] . . . for instance, [charges] for roaming or for long-distance service."[95] In establishing such a requirement that the notification include the per minute rate and additional charges, the Commission should, however, also provide some degree of flexibility to CMRS carriers regarding the manner in which they can comply with this requirement. Including accurate information could require a notification mechanism capable of tailoring rate information virtually on a per call basis, in that the nature and level of additional charges will tend to vary based upon the circumstances of each call. Rather than settle for a general announcement that some additional charges may apply, the Commission would better serve consumers by requiring that the CPP provider tailor the announcement to provide rate information (especially as it relates to additional charges) with as much precision as possible. But the Commission should grant flexibility to CPP providers with regard to working out the technical arrangements that would be necessary to effect such a specific notice regarding rate information.

CTIA, in opposing the provision of cost information because the information would be incomplete or misleading,[96] raises several issues that the Commission should consider in deciding whether to require information regarding air time rates and additional charges. CTIA points out that many factors will affect the cost of a CPP call, including IXC-imposed toll charges, message

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[95] *Id*. at para. 43.

[96] CTIA Reply Comments to CTIA Petition, filed June 8, 1998, at 6. (CTIA filed a Petition for Expedited Consideration in this docket in February 1998. *See CPP Rulemaking Notice* at para. 5 & n.7.)

unit charges imposed by the caller's local carrier, and variations in the CMRS carrier's charges depending upon the length of the call, the time of day of the call, and the subscriber's choice of the multiple service plans that may be offered by the CMRS carrier.[97] CTIA also argues that lengthening the intercept message "to explain all possible charges, including foreseeable and unforeseeable charges, would, in effect, make the message impractical and useless. Simply stated, an intercept message that is too long and too complicated will lead to consumers hanging-up before the message has been completed."[98]

Thus, CTIA asserts that any notification that attempts to include rate information would be inaccurate, incomplete, and too long. Pilgrim agrees with CTIA that, if the Commission opts to impose a requirement that rate information by included in a verbal announcement, the information should be as accurate and complete as possible. With respect to the CPP provider's own charges, the problem may not be as severe as CTIA suggests. Factors such as time of day and the applicable rate plan should lend themselves to a per minute rate calculation, *i.e.*, the per minute rate at the time the call is placed will be constructed with reference to the time of day of the call and CPP subscriber's rate plan. Thus, it should be possible for the notification to provide the calling party with a brief announcement of the per minute rate calculation based on all these factors. If the CMRS carrier's rate also varies depending upon the duration of the call, it may be possible to advise the calling party of this by stating the basic per minute rate for the initial period of the call and also indicating that this rate will increase if the call length exceeds the initial period.

[97] CTIA Comments to NOI at 9.

[98] *Id*. at 9 n.19.

Regarding additional charges,[99] it may also be possible to advise the calling party that roaming charges will apply, and to quote the per minute rate for these charges. Similarly, it may be possible to advise the calling party that IXC long distance charges will apply and to indicate the applicable per minute rate. This information is "knowable," in that it must be identified and calculated for purposes of billing the call. The issue is whether it is technically feasible to provide this information to the calling party in real time at the outset of the call.

As we have noted, Pilgrim believes that the Commission's proposal to provide comprehensive information concerning rates will serve important consumer protection goals, and the Commission's approach should be technically feasible if CPP providers are given sufficient flexibility to achieve compliance. Providing calling parties with information regarding basic and additional charges — including, for example, roaming, long distance, text dispatch, paging, text messaging, and voice mail charges — will enable calling parties to make an informed choice about whether to place calls to CPP subscribers.

A possible way to accomplish this would be for the Commission to permit a range of different types of announcements, any of which would be deemed in compliance with the notification requirement, but which also would be intended to account for the fact that the facilities of the various CPP providers may have different levels of technical capabilities. Some examples may help to illustrate the approach Pilgrim is suggesting.

Option One. Announce an overall per minute rate, that would be calculated to include any additional charges that may apply. The announcement could state, for example: "You will be

[99] Pilgrim notes that it may not be necessary to advise the caller that message unit charges may be imposed by the caller's LEC, since the caller (as a subscriber to the LEC's service) should already be aware of those charges.

billed 50 cents per minute for the call." The rate would include any roaming, long distance, or other charges billed on a per minute basis. There would be no need to specify in the announcement each of the separate components of the charge, because the caller would be apprised of the overall, "bottom line" per minute rate. This approach would require facility capabilities to calculate the overall rate on a real time basis.

Option Two. Announce the per minute airtime rate, and the maximum additional rate that could apply to the call if additional charges were to accrue, depending on the circumstances of the call. The announcement could state, for example: "You will be charged a basic rate of 35 cents per minute, and you may be charged an additional 15 cents per minute if long distance, roaming, or other additional charges apply to your call." This approach would require facilities capable of calculating the overall rate that could apply (50 cents, in this example), but would not require the technical capability to determine in real time whether additional charges will actually apply to the call.

Option Three. Announce the per minute airtime rate, and also notify the caller regarding each per minute or per message rate that could apply to the call. The announcement could state, for example: "You will be charged a basic rate of 35 cents per minute. The following additional charges may also apply: a 10-cent per minute roaming charge and a 5-cent per minute long distance charge. If you send a page, you will be charged 5 cents per message." This approach would require facilities capable of identifying the level of each additional charge, but would not require the technical capability to calculate the overall rate that could apply or the ability to determine in real time whether any additional charges will actually apply.

The Commission's rules could also permit CPP providers to develop other options for providing notification, so long as the options comply with the central requirement that calling

parties be given comprehensive and accurate information about the charges they will incur. Although the options we have discussed here are intended to illustrate how this central requirement could be met through the use of facilities with differing technical capabilities, we also believe that the first option represents the best approach, since it would provide the caller with the pertinent bottom line rate after a "behind the scenes" real time calculation of the rates that would actually apply to the call.

Pilgrim agrees with CTIA that lengthening the duration of the notification message could reach a point of diminishing returns, in that the calling party may terminate the call rather than wait through to the end of the intercept message. There are presumably two aspects of this issue: (1) What would be the duration of the call set-up time necessary for the carrier's systems to identify the applicable rates, calculate the overall per minute rate, and package this information into the verbal message?[100] (2) How long would the verbal message be?

The Commission may consider it appropriate to seek information from carriers regarding whether and the extent to which call set-up times would be affected by different scenarios for the inclusion of rate specific information in CPP notifications. Although CTIA does not address this issue specifically, CTIA does point out that the general wireline industry standard for delay between call initiation and call completion is 3 seconds,[101] and that the Commission, in implementing number portability, found that a 1.3 second delay for routing ported numbers would be unacceptable.[102]

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[100] As noted in our discussion above, Pilgrim favors giving CPP providers some flexibility to select options for notification messages based upon the capabilities of the providers' facilities and equipment. Some options may not include calculation of an overall per minute rate.

[101] CTIA Reply Comments to CTIA Petition at 6 & n.16.

[102] *Id.* at 6-7 & n.17.

With respect to the verbal message itself, it should be possible to provide a notification message lasting 30 to 40 seconds that imparts specific information about varying CMRS carrier rates, roaming charges, and long distance charges. Such a duration would be comparable to the length of recorded menu-selection call answering systems currently in use by many businesses and other organizations. Moreover, the length of the CPP notification message would be reduced in cases in which the CPP provider does not charge varying rates depending upon call duration, and in cases in which roaming or long distance charges do not apply. As Pilgrim discusses below, any problems regarding the length of the verbal message might also be ameliorated by a mechanism permitting a "bypass" of the message.[103]

With respect to other elements of the message, Pilgrim suggests that CPP providers be given flexibility to devise mechanisms the calling party can use to terminate or to complete the call. In addition to the "bypass" mechanism we discuss in the next section, the CPP provider should be able to employ a "positive" or "passive" acceptance of call completion. A "positive" acceptance would involve giving the calling party an instruction to push a button or to give a verbal indication (if the CPP carrier's equipment has voice recognition capabilities) in order for the call to be completed. A "passive" acceptance would involve the CPP notification including a verbal message stating: "If you hang up now you will not be charged for this call." If the calling party chooses not to hang up, then the call would be completed, but the time measurement for billing purposes would be delayed for several seconds after the verbal message (to give the calling party time to disconnect without incurring any charges).

2. Phase-Out of Verbal Notification Requirement

[103] See page 47, *infra*.

Pilgrim opposes (with one exception that we will discuss) any movement "to a simpler, more streamlined notification system that would *not* include rate information . . . ."[104] As a general matter, Pilgrim believes that any relaxation of requirements to provide rate information would disserve consumers and ultimately threaten consumer acceptance and utilization of the CPP option. Calling parties will need to be "cooperating partners" in the Commission's efforts to realize the potential that CPP holds to enhance local exchange competition, wireless competition, and spectrum efficiency. To the extent that calling parties refuse to "cooperate" by restricting their calls to CPP subscribers, the Commission will have failed to accomplish these objectives. Securing this customer acceptance, in Pilgrim's view, will depend in large part on taking an "up front" approach with calling parties by giving them the best and most complete information possible regarding charges they will incur by calling a CPP subscriber. Any suggestion that the Commission should permit CPP providers to backtrack from a verbal notification that includes rate information should be rejected because it would fail to protect consumers and would risk consumer rejection of the CPP service.

Arguments that the verbal notification can be phased out because calling parties over time will become familiar with the fact they will incur charges when they call CPP subscribers are not persuasive because they overlook the fact that there are always likely to be first-time callers to CPP subscribers and these callers should receive the benefit of a verbal notification. The same benefit also should apply to infrequent callers to CPP customers. Moreover, as wireless carrier

[104] *CPP Rulemaking Notice* at para. 44 (emphasis added).

rates continue to decrease as a result of competition,[105] call completions to CPP subscribers may be enhanced by specifically advising calling parties of these low per minute rates, as opposed to using a tone as the notification mechanism and thus leaving the calling party to speculate about the rate levels.

With regard to a possible exception to this general approach, Pilgrim suggests that the Commission permit the use of some type of "bypass" mechanism whereby the calling party could skip the verbal notification and proceed to an immediate connection with the CPP subscriber. Calling parties communicating with CPP subscribers on more than an occasional basis may find such a feature convenient.

3. Alternatives to Verbal Notification

The Commission has sought comment regarding whether other options for providing calling party notification should be used in place of, or in addition to, the use of a verbal notification as proposed by the Commission. The Commission lists 1+ dialing and the use of NXX or Service Access Codes (SACs) as examples.[106] Pilgrim opposes the use of any of these alternatives as replacements for a verbal notification. We believe this would be a "second best" solution that would not afford the level of consumer protection that can be achieved through use

[105] Average monthly prices for wireless service fell 1.6 percent in August 1999, compared to the previous month. *Telephony*, COMM. DAILY, Sept. 9, 1999, at 7. From December 1987 to December 1998, the average monthly bill for cellular, enhanced specialized mobile radio, and personal communications services fell from $96.83 to $39.43. The average monthly bill fell 7.8 percent in 1998. CTIA, Semi-Annual Wireless Industry Survey (available at http://wow-com.com/wirelesssurvey/).

[106] *CPP Rulemaking Notice* at para. 45.

of a verbal notification. We agree with CTIA that use of a unique CPP area code or other dialing prefix would not necessarily alert calling parties that they are calling a CPP subscriber.[107]

Although some parties have suggested that the use of a unique service code would enable telephone switches and private branch exchanges easily to identify CPP calls (thus enabling call screening and blocking functions to be activated),[108] Pilgrim believes that a better solution might be the creation of a per line blocking option, whereby each phone line could be programmed so that it is either "open" or "closed" for purposes of the placement of calls to CPP subscribers. This would necessitate creation of a database, similar to the Line Identification Data Base (LIDB), to be used for determining whether a dialed number is a CPP number.

V. LEVEL OF RATES CHARGED TO CALLING PARTIES

The Commission expresses concern that rates charged by CMRS carriers to parties calling CPP subscribers may not be subject to sufficient market pressures to ensure that they will be set at reasonable levels.[109] Pilgrim opposes any suggestion that the Commission should act to monitor or regulate rates charged by CMRS carriers in connection with their provision of a CPP service option, for three reasons. First, a notification requirement crafted in the manner proposed by the Commission should serve as an effective check against the level of rates charged to calling parties. To the extent calling parties are armed with the knowledge of the cost of the call, they can decide to disconnect the call if they prefer not to pay the rate. It also seems unlikely that there would be

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[107] CTIA Reply Comments to CTIA Petition at 6-7.

[108] *See CPP Rulemaking Notice* at para. 46.

[109] *Id*. at para. 53 ("Direct competitive pressure on the rate does not exist in the case of a call to a CPP subscriber . . . because the caller does not select the carrier and does not have the ability to switch to a different carrier to obtain a better rate for completing the call.").

frequent circumstances compelling calling parties to complete calls to CPP subscribers even though the calling parties find the quoted rate levels objectionable.

Second, there should in fact be adequate market pressures acting to place limits on CPP rates to calling parties. Specifically, it seems reasonable to assume that the CPP subscriber will not be indifferent to the rate charged to calling parties. For example, if the CPP subscriber is using the service option in a business context, the subscriber may have an interest in minimizing rates paid by calling parties who may be clients or potential sources of business. Thus, potential CPP subscribers would have an option to "shop around" among CMRS providers for purposes of contracting for the best rate.

Finally, CPP providers should have an incentive to set rates to calling parties at reasonable levels, because, as the Commission has noted, CPP has the potential to stimulate wireless network usage, with attendant benefits for both CPP subscribers and calling parties.[110] This potential would not be realized, and the viability of CPP in the marketplace might be placed at stake, if CPP providers were to set rates to calling parties at unreasonably high levels.

VI. CONCLUSION

The Commission has an opportunity to protect and promote the pro-competitive purposes of the Act by establishing a foundation that will provide CPP with a fair test in the marketplace. If CPP is successful, consumers will benefit from enhanced competition and increased spectrum efficiency. A fair marketplace test can only be provided if CPP providers can recover charges from calling parties. This, in turn, can be accomplished successfully only if the Commission acts to require the LECs to provide billing and collection service to CPP providers. The Commission

[110] *Id.* at para. 3.

therefore should invoke its ancillary jurisdiction as the best means of achieving the objectives the Commission has sought to pursue in this rulemaking proceeding.

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CERTIFICATE OF SERVICE

I, Joelle Zajk, a Professional Assistant with the law firm of Hunton & Williams, hereby certify that on September 17, 1999, a true and correct copy of the foregoing COMMENTS OF PILGRIM TELEPHONE, INC., were served by hand delivery upon the following:

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